DOCKET FILE COPY ORIGINAL

LAW OFFICES
KOTEEN & NAFTALIN, L.L.P.
1150 CONNECTICUT AVENUE
WASHINGTON, D.C. 20036-4104

BERNARD KOTEEN*
ALAN Y. NAFTALIN
ARTHUR B. GOODKIND
GEORGE Y. WHEELER
MARGOT SMILEY HUMPHREY
PETER M. CONNOLLY
CHARLES R. NAFTALIN
GREGORY C. STAPLE
R. EDWARD PRICE
* SENIOR COUNSEL

TELEPHONE
(202) 467-5700
TELECOPY
(202) 467-5915

March 13, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Hand Delivered

Re: Comments and Petition for Reconsideration of Telstra
CC Docket No. 97-211

Dear Ms. Salas:

Transmitted herewith, on behalf of Telstra Corporation Limited, are an original and 12 copies of its "Comments and Petition for Reconsideration of Telstra" in the above-referenced proceeding. Pursuant to the Commission's Order, DA 98-384, of February 27, 1998, in the above-referenced proceeding, a diskette containing this filing is concurrently being hand delivered to Janice M. Myles at the Common Carrier Bureau.

In the event there are questions concerning this matter, please contact me.

Very truly yours,

Gregory C. Staple

Enclosure

cc (w/encl and diskette) by hand delivery:
Janice M. Myles

No. of Copies rec'd 0+12
List ABCDE

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of WorldCom, Inc. and	)	CC Docket No. 97-211
MCI Communications Corporation for	)	
Transfer of Control of MCI Communications	)	
Corporation to WorldCom, Inc.	)	

COMMENTS AND PETITION FOR RECONSIDERATION OF TELSTRA

Telstra Corporation Limited ACN 051 775 556 ("Telstra"), by its attorneys and pursuant to the February 27, 1998 Order, DA 98-384, issued by the Common Carrier Bureau in the above-captioned proceeding, submits these further comments regarding the proposed merger of WorldCom, Inc. ("WorldCom") and MCI Communications Corporation ("MCI").

Telstra welcomes the Bureau's recognition that due process and other considerations require a further round of public comments in this docket. However, the current schedule is premature. The evidentiary record necessary to review the competitive impact of the merger on global Internet access and related markets is still woefully inadequate. WorldCom and MCI have yet to submit sufficient information on the post-merger company's arrangements regarding Internet access (or otherwise) and the FCC has yet to receive, let alone provide access to, relevant documents obtained by the Department of Justice (DOJ) under the Hart-Scott-Rodino (HSR) amendments to the Clayton Act (hereafter HSR documents). The press recently has reported that the DOJ's investigation may still be four to six months from completion and the Department is still compiling an evidentiary record. For this reason alone, Telstra asks the Bureau to reconsider its Order and, notwithstanding the current round of

comments, to issue a further order responsive to Telstra's initial request: the law requires that an adequate opportunity for public comment be provided after, not before, interested parties are able to inspect all relevant documents including the HSR documents which the FCC obtains in due course from the DOJ.

A. Background

On February 4, 1998, Telstra filed a motion to extend the date for filing reply comments regarding the GTE Service Corporation (GTE) Motion to Dismiss. There Telstra also asked the Commission to establish a new pleading cycle beginning thirty days after "(a) the FCC receives all relevant Hart-Scott-Rodino Act documents from the [Department of Justice]; and (b) makes said Hart-Scott-Rodino (HSR) documents available to parties, together with any other relevant documents, pursuant to outstanding [Freedom of Information Act (FOIA)] requests."[1] Both Telstra and GTE Service Corporation ("GTE") had earlier filed FOIA requests to review HSR documents as well as other documents gathered in the course of the Commission's investigation of the proposed merger.[2] Subsequently, however, and prior to the release of the Bureau's February 27 Order, the FCC responded to the GTE and Telstra FOIA requests advising that the Commission had "not received any protected, confidential or Hart-Scott-Rodino materials" and "that [a]ll documents with respect to the [merger] proceeding

---

[1] Telstra Motion, Feb. 4, 1998, at 5.

[2] See GTE, "Request to Inspect Protected Information/Freedom of Information Act Request," Jan. 5, 1998; Telstra, "Freedom of Information Act Request and Request for Expedited Action," Jan. 23, 1998.

have been placed in the public record."[3]

The FCC's staff informally has advised counsel for Telstra that, as of this writing, the Commission has still not obtained any HSR documents. Nor have WorldCom or MCI voluntarily supplemented the record in the interim. Thus, from an evidentiary standpoint, the record basis for determining the competitive impact of the proposed merger on global Internet access (i.e., whether the post-merger company will make available cost-based, unbundled access to U.S. Internet facilities) remains as incomplete as it was when Telstra filed its February 4 motion to establish an additional public comment cycle.

B. The Bureau's Order Does Not Address Telstra's Concerns And Interested Parties Should Be Given Further Opportunity To Comment After The Record Has Been Supplemented With The HSR Documents And The Materials Gathered During The FCC's Own Investigation

The Order states that Telstra has "essentially [been] grant[ed] the relief [it] seeks" by requesting an extension of the date for reply comments on GTE's Motion to Dismiss because a further two weeks has been granted for filing comments. The Order misinterprets Telstra's request. An additional comment round is necessary so that the parties may examine relevant factual documents — including, but not limited to, HSR documents provided by WorldCom and MCI to the Justice Department — that the Commission has a duty to obtain in the course of its investigation of the competitive effects of the proposed merger. Recent developments have underscored the significance of providing interested parties access to such documents.

---

[3] See e.g., Letter to R. Edward Price, Koteen & Naftalin, from Gregory A. Weiss, Deputy Chief Enforcement Division, Common Carrier Bureau, FCC, February 13, 1998, p. 1.

For example, both the DOJ and the European Commission have announced a widening of their merger review principally so that they can further investigate the effects which the proposed merger might have on various Internet service markets.[4] Moreover, in an attempt to compile an adequate record to resolve the competition issues involved, the Justice Department has hired outside experts and has sent civil subpoenas to the providers of Internet services seeking information about their reliance on the Internet backbone networks of WorldCom and MCI.[5] The DOJ also has made a second formal request for information to WorldCom and MCI — a request which presumably would not have been submitted if the parties had already allayed the DOJ's competition concerns.

The FCC also has a unique role to play in determining whether the merger is pro-competitive or not. The Commission has a co-equal responsibility with the DOJ in protecting the public from anti-competitive combinations in the communications industry. It also has a separate statutory obligation under the Communications Act to ensure that common carrier facilities are not provided on anti-competitive or unreasonably discriminatory terms (e.g., to investigate the terms on which a post-merger MCI-WorldCom will furnish International Private Lines and other common carrier services and facilities to Internet Service Providers

---

[4] See John R. Wilke & Jared Sandberg, WorldCom, MCI Probe Is Widened, Wall St. J., Mar. 10, 1998, at A3, A8 (this article is appended hereto as Attachment 1); see Rivals Cheer As Europeans Probe WorldCom-MCI Merger, Telecom. Reports, Mar. 9, 1998, at 26.

[5] Id.

(ISPs), including ISPs affiliated with MCI-WorldCom).[6] The twin FCC pleadings submitted by WorldCom and MCI on January 26 and 27, 1998 provide further evidence as to why such an investigation is still necessary.

C. The WorldCom-MCI Joint Comments And Joint Opposition Do No Demonstrate That The Post-Merger Company Will Provide Non-Discriminatory, Cost Based Access To U.S. Internet Facilities

The WorldCom-MCI January 27, 1997 "Joint Opposition" To GTE's Motion to Dismiss provides no additional factual information regarding the terms on which off-shore ISPs will have access to the post merger company's Internet backbone and switching facilities. That pleading is devoted almost exclusively to legal arguments regarding the public interest burden which the applicants must satisfy the applicants rely upon their initial application and their January 26, 1997 "Joint Reply" for the facts. However, neither of these documents contains adequate information to carry the applicant's public interest burden on the Internet access issues raised by Telstra.

For example, at pages 88 to 91 of their "Joint Reply", WorldCom and MCI attempt to rebut Telstra's concerns regarding Internet access for off-shore ISPs by stating that Telstra "can buy a whole circuit of transoceanic capacity, purchase backhaul [from an international gateway] ... and then connect via any U.S. regional or national backbone provider to the

---

[6] 47 U.S.C. §§ 214(a), 310(d); see also MCI Communications Corp. and British Telecommunications plc, 12 FCC Rcd 15351, 15353 (¶2) (1997) ("BT/MCI Order") ("[W]e must be persuaded that the proposed transaction is in the public interest . . . before we can approve the . . . merger. Applicants bear the burden of demonstrating that the proposed transaction is in the public interest.") (footnote omitted); NYNEX Corp. and Bell Atlantic Corp., 12 FCC Rcd 19985, 20000 (¶ 29) (1997) ("Bell Atlantic/NYNEX Order").

Internet."[7] It also is asserted that "MCI, WorldCom and other U.S. ISP backbone providers offer foreign ISPs interconnection with their networks at the same price, and on the same terms and conditions that they offer access to domestic ISPs."[8]

The foregoing statements are without factual support in the record and seek to side-step the discriminatory economic regime for global Internet access which Telstra has challenged. Though Telstra, or its U.S. affiliate, may legally buy a whole circuit across the Pacific to connect to the Internet, WorldCom and MCI have yet to show that requiring Telstra and other off-shore ISPs to pay the full cost of Internet access is a reasonable and non-discriminatory practice under the Communications Act when that capacity is used to carry traffic in both directions — that is, Internet traffic to Australia generated by U.S. ISPs, including ISPs affiliated with WorldCom and MCI.

Likewise, because WorldCom and MCI have not fully disclosed their current or post-merger terms for connecting with U.S. or off-shore ISPs — indeed, that is one of the central competitive issues now before the FCC — the bold assertion that such terms are non-discriminatory plainly does not meet their burden of proof. For the same reason, the FCC should not place any weight on the recently reported statement by WorldCom Vice Chairman John Sidgmore to the effect that the post-merger company would "absolutely not" change its peering policy.[9] The reason is that neither WorldCom or MCI have fully disclosed their

---

[7] "Joint Reply" at p. 90.

[8] Ibid.

[9] M. Mills and R. Chandrasakaran "Smaller Rivals Question MCI-WorldCom Merger Plan," The Washington Post, March 11, 1998 at C11.

current peering policies and to the extent they have, they plainly do discriminate against off-shore and other ISPs such as Telstra.[10]

D. Conclusion

For all the above reasons, the Bureau should reconsider its Order; conduct the pre-merger investigation required by law; obtain all relevant HSR documents from the DOJ; make the HSR documents and the record it has independently compiled available to interested parties; and then provide a further opportunity for public comment. Commonsense principles of administrative justice require no less. That is also what the Communications Act and the FCC's competition policies require. And this approach also will best serve the broader community of telecom users in the U.S. and abroad by making it clear that the principal U.S.

---

[10] The criteria which WorldCom's UUNet subsidy announced in mid-1997 for peering would disqualify Telstra and many other ISPs because they lack U.S. backbone networks of adequate size and diversity (i.e., a U.S. network with DS-3 (45 Mbps) links to at least four city Network Access Points (NAPs). See "UUNet Details Peering Strategy" <www.usa.uu.net/press/peering.html> ISPs which lack direct peering agreements face unequal access to the U.S. Internet as UUNet has acknowledged. See Telstra's initial "Comments" at p. 6, n.16.

telecommunications regulator will conduct a full and impartial review of the largest telecom merger ever proposed.

Respectfully submitted,

TELSTRA CORPORATION LIMITED

By: _____

Alan Y. Naftalin
Gregory C. Staple
R. Edward Price

KOTEEN & NAFTALIN, L.L.P.
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036-4104
(202) 467-5700

Its Attorneys

March 13, 1998

WorldCom, MCI Probe Is Widened

By JOHN R. WILKE
and JARED SANDBERG
Staff Reporters of THE WALL STREET JOURNAL

The Justice Department widened its investigation of WorldCom Inc.'s proposed acquisition of MCI Communications Corp., signaling that the $37 billion transaction could face antitrust problems.

Regulators are focusing on how dominant the combined companies would be in Internet services, according to documents and people who have been interviewed for the investigation. If the combination is approved, industry analysts estimate the companies would control more than half of Internet traffic through the high-capacity cables and computers that form the backbone of the international data network.

The Justice Department recently hired outside experts to review the case. It has sent civil subpoenas to companies competing with WorldCom and MCI in Internet backbone traffic, including GTE Corp., International Business Machines Corp., Sprint Corp. and PSINet Inc. It also submitted a second formal request for information to WorldCom and MCI, a move that often signals that a deal is facing delay and further investigation.

The proposed transaction is already facing tough scrutiny in Europe. European Union antitrust regulators last week launched an investigation that could delay the deal by months. The European Commission said that it was "concerned about the parties' combined market share in relation to the supply of Internet backbone services" and that these include "the provision of a network of high-capacity, long-distance connections capable of carrying data nationally and internationally."

The Justice Department's 13-page civil subpoenas, known as civil investigative demands, were dated Feb. 12 and sent to most companies that operate Internet "backbone" networks. Among other things, the companies were ordered to conduct a series of tests that gauge traffic flow from their networks and determine the level of their reliance on similar networks run by WorldCom and MCI. They were also asked highly technical questions about their data-traffic patterns and volume and the interaction of their networks with other Internet networks.

The fate of the WorldCom-MCI deal could help shape the future of the Internet and how its services are priced and delivered. Major Internet access providers strike so-called peering agreements with one another to exchange traffic at interchange points in a free manner. If one

Please Turn to Page A8, Column 1

WorldCom-MCI Study Widens

Continued From Page A3

entity controls the lion's share of networks, it could easily degrade the performance of rivals by neglecting such exchange points. At the same time, critics say, WorldCom and MCI could ensure that customers of their own Internet access enjoy speedy connections and raise the cost to rivals.

'Preposterous' Charges

John Sidgmore, WorldCom vice chairman and chief executive officer of its big Internet access unit, UUNet Technologies, denied that the industry would become any less competitive if MCI and WorldCom were combined. He called charges that the company could degrade competitors' networks "preposterous" and indicated that price boosts would be counterproductive for a combined entity. He also disputed that a combination would dominate Internet traffic, saying the merged companies would have only 20% of the industry's revenue.

He also was largely unfazed by competitors' charges and the government's new actions. "It's not a surprise that this is going to be a lengthy and complex deal in an industry where everybody sues everybody about everything," Mr. Sidgmore said. "That's part of the communications industry today."

Few of the insiders following the government investigation think the MCI-WorldCom deal will be stopped outright. More likely, they say, the department will demand safeguards to encourage competition and restrain pricing, and could ask for the sale of some assets. One possible approach, these people said, would be measures to protect "openness" in the network among peers, and allow small networks that want to connect to their larger peers to do so freely.

In the subpoenas, the Justice Department asked that the Internet companies conduct tests March 1 through March 7 that measure the flow of their traffic to other networks. The results are expected to help the agency determine whether MCI and WorldCom would together control so much of the Internet that they could have an adverse impact on competitors and ultimately Internet users.

Sprint's Position

"If you allow one player to acquire over 50% of the market, they are in a position to degrade the connection or increase the cost of connections," said J. Richard Devlin, chief counsel at Sprint. A merger, he added, "would potentially short-circuit the growth of this global-information network and fundamentally change its course."

ternet competition is increasing, not decreasing. He added that there are nearly 40 backbone providers, 4,000 smaller Internet service providers and new entrants such as Qwest Communications International Inc. laying massive networks of their own.

Indeed, one of the key issues that the Justice Department must consider is the difficulty new companies face in entering the Internet backbone business. If the barrier to entry is low, officials might be somewhat more inclined to approve the merger even if the market is concentrated, because other companies could enter. To evaluate this and other issues, the department recently hired two prominent antitrust experts, Carl Shapiro, a former Justice Department official now teaching at the University of California at Berkeley, and Michael Katz, former chief economist of the Federal Communications Commission.

The Wall Street Journal, March 10, 1998, pp. A3 and A8.

CERTIFICATE OF SERVICE

I, Barbara Frank, a legal secretary in the firm of Koteen & Naftalin, L.L.P., hereby certify that on the 13th day of March 1998, copies of the foregoing "Comments And Petition For Reconsideration Of Telstra", were deposited in the U.S. mail, postage prepaid, or hand delivered*, addressed to:

* Chairman William E. Kennard
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

* Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W. Room 832
Washington, DC 20554

* Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, N.W. Room 826
Washington, DC 20554

* Commissioner Michael K. Powell
Federal Communications Commission
1919 M Street, N.W. Room 802
Washington, DC 20554

* Commissioner Harold W. Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W. Room 844
Washington, DC 20554

* Richard Metzger
Chief, Common Carrier Bureau
1919 M Street, N.W. Room 500
Washington, DC 20554

* Michelle Carey
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 534-J
Washington, D.C. 20554

* Geraldine Matise
Chief, Network Services Division
Common Carrier Bureau
Federal Communications Commission
2000 M Street, N.W. Room 235
Washington, DC 20554
(2 copies)

* Gregory M. Cooke
Network Services Division
Common Carrier Bureau
Federal Communications Commission
2000 M Street, N.W. Room 235
Washington, DC 20554

* Regina M. Keeney
Chief, International Bureau
Federal Communications Commission
2000 M Street, N.W.
Washington, DC 20554

* International Transcription Service, Inc.
1231 20th Street, N.W.
Washington, DC 20036

* Janice M. Myles
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

Michael H. Salsbury
Mary L. Brown
Larry A. Blosser
MCI Communications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006-3606

Andrew D. Lipman
Jean L. Kiddoo
Swidler & Berlin, Chtd.
3000 K Street, N.W., Suite 300
Washington, DC 20007

Catherine R. Sloan
Robert S. Koppel
WorldCom, Inc.
1120 Connecticut Avenue, N.W.
Washington, DC 20036

Patrick M. Scanlon
Mark F. Wilson
Communications Workers of America,
AFL-CIO, CLC
501 Third Street, N.W.
Suite 800 Washington, D.C. 20001

Barbara O'Connor
Donald Vial
Maureen Lewis
The Alliance for Public Technology
901 Fifteenth Street, N.W.
Suite 230
Washington, D.C. 20005

Sue Ashdown
XMission
51 E. 400 S.
Suite 200
Salt Lake City, UT 84111

Janice Mathis
Rainbow/PUSH Coalition
Thurmond, Mathis & Patrick
1127 W. Hancock Avenue
Athens, GA 30603

David Honig
Rainbow/PUSH Coalition
3636 16th Street , N.W. #B-366
Washington, D.C. 20010

Ramsey L. Woodworth
Robert M. Gurss
Rudolph J. Geist
Wilkes, Artis, Hendrick & Lane, Chartered
1666 K Street, N.W.
Suite 1100
Washington, D.C. 20006

Matthew R. Lee
Inner City Press/Community on the Move &
Inner City Public Interest Law Project
1919 Washington Avenue
Bronx, NY 10457

John Thorne
Sarah Deutsch
Robert H. Griffen
Bell Atlantic
1320 North Court House Road
8th Floor
Arlington, VA 22201

Richard E. Wiley
R. Michael Senkowski
Jeffrey S. Linder
Peter D. Shields
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

John J. Sweeney
American Federation of Labor and Congress
of Industrial Organizations
815 16th Street, N.W.
Washington, D.C. 20006

William B. Barfield
Jonathan Banks
1155 Peachtree Street, N.E.
Suite 1800
Atlanta, GA 30309

Thomas A. Hart, Jr.
Amy E. Weissman
M. Tamber Christian
Ginsburg, Feldman and Bress, Chartered
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

Andrew Jay Schwartzman
Gigi B. Sohn
Joseph S. Paykel
Media Access Project
Suite 400
1707 L Street, N.W.
Washington, D.C. 20036

Barbara Frank